

**PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
COMMISSION DIRECTIVE**

ADMINISTRATIVE MATTER	<input type="checkbox"/>	DATE	<u>July 11, 2018</u>
MOTOR CARRIER MATTER	<input type="checkbox"/>	DOCKET NO.	<u>2017-207-E/2017-305-E 2017-370-E</u>
UTILITIES MATTER	<input checked="" type="checkbox"/>	ORDER NO.	<u>2018-495</u>

THIS DIRECTIVE SHALL SERVE AS THE COMMISSION'S ORDER ON THIS ISSUE.

SUBJECT:

[DOCKET NO. 2017-207-E](#) - Friends of the Earth and Sierra Club, Complainants/Petitioners v. South Carolina Electric & Gas Company, Defendant/Respondent;

[DOCKET NO. 2017-305-E](#) - Request of the Office of Regulatory Staff for Rate Relief to South Carolina Electric & Gas Company's Rates Pursuant to S.C. Code Ann. § 58-27-920;

-and-

[DOCKET NO. 2017-370-E](#) - Joint Application and Petition of South Carolina Electric & Gas Company and Dominion Energy, Incorporated for Review and Approval of a Proposed Business Combination between SCANA Corporation and Dominion Energy, Incorporated, as May Be Required, and for a Prudency Determination Regarding the Abandonment of the V.C. Summer Units 2 & 3 Project and Associated Customer Benefits and Cost Recovery Plans - Staff Presents for Commission Consideration South Carolina Electric & Gas Company and Dominion Energy, Incorporated's Petition for Rehearing and Reconsideration of Order Nos. 2017-73H and 2018-79H.

COMMISSION ACTION:

SCE&G and Dominion Energy or the "Joint Applicants" have petitioned this Commission for rehearing and reconsideration of Hearing Officer Order Nos. 2018-73-H and 2018-79-H or the "Discovery Orders," in which the Hearing Officer granted the ORS Motion to Compel and denied reconsideration of his decision to compel SCE&G to produce information in response to ORS Request 5-25. The Joint Applicants ask us to overrule the decisions granting ORS access to information from governmental investigations arising out of the V.C. Summer Project. Order No. 2018-73-H was issued by the Hearing Officer on June 21, 2018, and compelled production of the information by July 6, 2018. The Order Denying Reconsideration, Order No. 2018-79-H, was issued on July 3, 2018, promptly after reconsideration was requested by the Joint Applicants on July 2. The Hearing Officer's Order Denying Reconsideration also denied a requested Stay of production of the materials past the original July 6, 2018, deadline. Mr. Chairman, I move that the Joint Applicants' Petition for Rehearing and Reconsideration to this Commission be denied.

First, the Joint Applicants cite the impracticability of Order No. 2018-79-H, which required them to produce the specific information within two business days. Of course, the Hearing Officer's initial order to compel production by July 6, 2018, was issued on June 21, 2018. Commission Regulation 103-854 (D) states that filing a Petition shall not excuse or delay compliance with an Order issued by the Commission, unless the Commission so indicates. We hold that this Regulation also applies to Hearing Officer Orders. Accordingly, no

impracticability occurred, since SCE&G was on notice of the July 6, 2018, deadline for production of discovery as early as June 21, 2018, the date of the original Hearing Officer's Order.

Second, the Joint Applicants assert that the Discovery Orders constitute an expansion of discovery obligations, and that the Orders violate South Carolina law and the Commission's Regulations. According to the Joint Applicants, the discovery requests concern a single "cloned" discovery request from other cases that requires SCE&G to produce to ORS documents whose relevance ORS cannot begin to ascertain, whose relevance is doubtful, and which will be duplicative. The Joint Applicants cite a South Carolina Court of Common Pleas decision which refused to compel SCE&G's response to nearly identical document requests as exceeding the scope of discovery permitted under the South Carolina Rule of Civil Procedure, Rule 26(b)(1). The Circuit Court found that there must be a showing of relevance between the discovery sought and the action before the Court. The Court did not find a clear nexus in that case.

ORS has stated that Request 5-25 only seeks information from investigations arising out of the V.C. Summer Project, and that ORS is not seeking information on government investigations that do not arise out of the Project. ORS also noted that governmental investigations regarding the problems at the Project are likely sources of information regarding the prudence of SCE&G's decisions, and thus are relevant in the present dockets and are reasonably calculated to lead to the discovery of admissible evidence. I agree with ORS that the material is relevant and reasonably calculated to lead to the discovery of admissible evidence in the present dockets, since the material could provide information on the prudence of SCE&G's decisions with regard to the V.C. Summer construction project. The nexus between the discovery sought and the action before the Commission is clear, unlike in the referenced Circuit Court case. Despite arguments to the contrary, I also believe that the request is well within the bounds of discovery defined by Rule 26, and SCE&G's additional arguments are simply unavailing. Again, I move that the Joint Applicant's Petition be denied, and that the Hearing Officer's Orders therefore be affirmed.

Mr. Chairman, the Joint Applicants have also requested an extension until July 13, 2018, to comply with the Hearing Officer's Orders to produce the discovery, if we uphold those Orders. ORS has no objection to the extension. Since I have moved to uphold those Orders, I further move that we grant the requested extension for compliance until July 13, 2018, and that the directive memorializing this motion shall be the Commission's order on this issue.

PRESIDING: Randall

SESSION: Regular

TIME: 2:00 p.m.

	MOTION	YES	NO	OTHER
ELAM	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
ERVIN	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
HAMILTON	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
HOWARD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
RANDALL	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
WHITFIELD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
WILLIAMS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<u>Absent</u>

Military Leave

(SEAL)

RECORDED BY: J. Schmieding

